

**ARKANSAS COURT OF APPEALS**

DIVISION II

No. CA07-907

WESLEY CRAIG SHAW,  
APPELLANT

V.

VICTORIA ANN DYSON,  
APPELLEE

Opinion Delivered 24 SEPTEMBER 2008

APPEAL FROM THE BENTON  
COUNTY CIRCUIT COURT,  
[NO. E-98-684-4]

THE HONORABLE JOHN R.  
SCOTT, JUDGE

AFFIRMED

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**D.P. MARSHALL JR., Judge**

Since their divorce in 1999 the parties have been wrangling over child support. Most recently, Shaw filed a motion to modify his child-support obligation. The circuit court granted Shaw’s motion, but modified only modestly, reducing his monthly obligation from \$1,130.00 per month to \$1,073.00 per month. Shaw argues two points on appeal.

Shaw first argues that the circuit court erred in determining that he was self-employed. In its May 2007 bench ruling, the court recognized that Shaw earned commissions as a carpet salesman and was self-employed as a part-time home-builder: “The plaintiff does not fit clearly within either of those categories but has a foot in both worlds.” The record supports the court’s determination. Shaw never disputed the fact that, although his earnings came primarily from his job as a carpet salesman,

he also worked as a part-time home-builder. Regardless of how the court categorized Shaw's employment, the court calculated his child-support obligation correctly under *Taylor v. Taylor*, 369 Ark. 31, 250 S.W.3d 232 (2007) and Administrative Order No. 10. Therefore, the court did not err in characterizing the nature of Shaw's employment.

Shaw argues second that the circuit court abused its discretion in calculating the amount of his child support. In *Taylor*, our supreme court confirmed the rule that "when income fluctuates from month to month, income for child-support purposes should be calculated by averaging monthly earnings." 369 Ark. at 40, 250 S.W.3d at 239. The court further instructed that, to achieve the truest picture of a person's income, more than one month's income should be considered. *Ibid.*

In calculating Shaw's monthly income, the circuit court averaged Shaw's earnings from his job at CarpetSmart (less the proper deductions) across a five-month period from December 2006 through the end of April 2007. In averaging Shaw's total monthly income, the court made a miscalculation in the amount of \$100—but this miscalculation was in Shaw's favor. The court took twenty-one percent of Shaw's average monthly income to arrive at his monthly obligation of \$1,073.00, which followed the chart. It would have been better for the court to have taken an even longer view of Shaw's monthly income. *Cf. Taylor*, 369 Ark. at 40, 250 S.W.3d at 239 (suggesting a one- to two-year view). But like the small mathematical error, the

court's decision to rely on Shaw's income from December 2006 through April 2007 benefitted Shaw: his average monthly income calculated from his 2006 income-tax return was slightly higher than in the more recent months.

Shaw mainly challenges the circuit court's decision to disregard his 2006 unreimbursed business expenses (approximately \$22,000.00) in determining his average monthly income. According to *Taylor*, "the amount of child support lies within the sound discretion of the trial court." 369 Ark. at 39, 250 S.W.3d at 238. In its bench ruling, the court balanced Shaw's unreimbursed business expenses against his 2006 tax refund (approximately \$10,000.00), the fact that Shaw currently had two homes for sale, and the fact that Shaw had recently decreased his withholdings for state and federal income taxes in December 2006. Administrative Order No. 10 contains no requirement that the court deduct unreimbursed business expenses in calculating monthly income. Instead, the Order requires the court to consider income broadly defined. Here the court proceeded carefully and considered all the relevant facts. No abuse of discretion occurred in the decision about Shaw's unreimbursed business expenses.

Affirmed.

PITTMAN, C.J., and HEFFLEY, J., agree.